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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

ALVANTOR INDUSTRY CO., LTD.
and NINGBO LEEDOR INDUSTRY
CO., LTD.

Plaintiffs,

v.

SHENZHEN JORDA TRADING
CO., LTD., DBA ELEVENS, PEX
FIX, ET AL., SHENZHEN 703,
AKA, SHENZHEN QILINGSAN
NETWORK TECHNOLOGY CO.,
LTD., NEUTYPE, AND MIRUO
MIRROR, INC.,

Defendants.

Case No: 2:22-cv-04844-DOC-JPR

[Hon. David O. Carter]

**PLAINTIFF ALVANTOR
INDUSTRY CO., LTD.'S NOTICE
OF MOTION AND MOTION FOR
ATTORNEYS' FEES;
MEMORANDUM OF POINTS AND
AUTHORTIES IN SUPPORT
THEREOF**

[Filed concurrently with Declarations of
Sang Dang, Salvatore Picariello, and
Paul Shankman, and (Proposed) Order]

**Motion for Default Judgment Granted
on April 12, 2024 [Dkt. 89]**

No Hearing Requested

1 **PLEASE TAKE NOTICE** that Plaintiff Alvantor Industry Co., Ltd.
2 (“Alvantor”) will and hereby does move for the Court for an Order entering an
3 award of attorneys’ fees in the sum of \$99,967.50 to Alvantor and against
4 Defendants Shenzhen Jorda Trading Co., Ltd., dba Elevens, Pex Fix, et al.,
5 Shenzhen 703, aka, Shenzhen Qilingsan Network Technology Co., Ltd., Neutype,
6 and Miruo Mirror, Inc. (collectively, “Defendants”).

7 On April 12, 2024, this Court entered an Order Granting Plaintiffs’
8 Motion for Default Judgment. (Dkt. 89.) In doing so, the Court allowed
9 Alvantor to file a subsequent motion for attorneys’ fees pursuant to L.R. 54-7
10 and L.R. 55-3. (*Id.* at p. 12.)

11 This Motion is based on the grounds that Alvantor prevailed in this case
12 by obtaining a default judgment against Defendants. Thus, Alvantor is entitled
13 to its reasonable attorneys’ fees under the Copyright Act, 17 U.S.C. § 505.
14 Alvantor is also entitled to its reasonable attorneys’ fees relating to its Lanham
15 Act claims pursuant to 15 U.S.C. § 1117, which entitles the prevailing party to
16 its attorneys’ fees in exceptional cases. This case plainly qualifies as exceptional
17 in light of the substantive strength of Alvantor’s claims and the oppressive,
18 vexatious, dishonest, and harassing manner in which Defendants defended
19 against Alvantor’s claims.

20 This Motion is based on this Notice of Motion, the attached Memorandum
21 of Points and Authorities, the concurrently filed declarations of Sang Dang,
22 Salvatore Picariello, and Paul Shankman, and all exhibits thereto; and the
23 complete files and records in this action; matters that may be judicially noticed;
24 and any oral or documentary evidence that may be presented at or before the
25 hearing on this matter, if requested by the Court.

26 Alvantor has provided notice of this Motion to the last known email
27 addresses available for Defendants. Alvantor is unable to hold a meet-and-
28 confer with counsel pursuant to L.R. 7-3, as Defendants are not represented by

1 counsel.

2
3 Dated: April 22, 2024

FORTIS LLP

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND SUMMARY OF ARGUMENT

Plaintiff Alvantor submits this memorandum in support of its Motion for Attorneys' Fees (the "Motion") pursuant to L.R. 54-7, L.R. 55-3, 17 U.S.C. § 505, 15 U.S.C. § 1117, and this Court's Order granting Plaintiffs' motion for entry of default judgment. (Dkt. 89.) This matter is suitable for disposition without hearing. Alvantor seeks the sum of \$99,967.50, for attorneys' fees it has incurred in successfully prosecuting its claims for copyright and trade dress infringement.

Alvantor's request for attorneys' fees under the Copyright Act is warranted simply by virtue of having prevailed on this claim. It also meets the discretionary test for an award of fees under the Copyright Act. In addition, Alvantor's trade dress claim is "exceptional" for two reasons: (1) this Court has already found that Defendants' infringement was willful and malicious (Dkt. 89 at p.10); and (2) the unreasonable manner in which Defendants litigated this action, which wasted this Court's time and Alvantor's resources.

As noted below and in the concurrently filed declarations, the hourly rates of Alvantor's counsel - \$450 to \$475 per hour – are in line with the hourly rates prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation. Moreover, the hours expended by Alvantor's attorneys are also reasonable. Among other things, Alvantor has entirely eliminated several categories of tasks from consideration in this Motion, including but not limited to, billable entries related solely to Plaintiffs' IIPEA tort claim, third-party discovery on Amazon (which was in furtherance of the IIPEA claim), and tasks related to Messrs. Dang's and Picariello's transition when replacing Mr. Shankman as day-to-day counsel. These and other "Non-Reimbursable Hours" total \$73,525.00 in write-offs.

Alvantor has also apportioned the fees it is requesting in this Motion when a particular billing entry involves both covered (i.e., time spent on Alvantor's

1 copyright or trademark claims) and non-covered time (i.e., time spent on Alvantor's
2 IIPEA claim). Based on Messrs. Dang's and Picariello's experience and review of
3 these "mixed" entries, and the fact that the IIPEA claim constitutes just one of five
4 causes of action, Alvantor request that Court not impose more than a 30% discount
5 to these "mixed" entries. See *Jackson v. Gaspar*, 2022 U.S. Dist. LEXIS 110670, at
6 *22-23 (C.D. Cal. Feb. 24, 2022) (DOC) (reducing lodestar by 30% to account for
7 the non-Lanham Act claims plaintiff pursued because "the total amount of work
8 done in litigation is not perfectly scalable with the claims brought"). Finally, there
9 are a number of entries that were unrelated to Alvantor's and Leedor's IIPEA, and
10 for which Alvantor seeks full reimbursement.

11 For these and other reasons set forth below, Alvantor respectfully requests
12 that the Court award Alvantor attorneys' fees in the amount \$99,967.50.

13 **II. BACKGROUND**

14 Plaintiffs filed their Sixth Amended Complaint on November 6, 2023. (Dkt.
15 75.) Alvantor alleged that Defendants engaged in unfair competition and trade
16 dress infringement through their unauthorized copying of Alvantor's trade dress
17 elements in its portable gazebo-style tents. Defendants also committed copyright
18 infringement through their unauthorized copying of Alvantor's lengthy and detailed
19 copyright-protected Descriptions. Plaintiffs Alvantor and Leedor further alleged
20 Defendants intentionally interfered with Plaintiffs' prospective economic advantage
21 by repeatedly submitted false infringement reports and complaints to Amazon
22 against certain product listings by Alvantor and Leedor.

23 On November 20, 2023, Defendants filed their Answer to the SAC. (Dkt.
24 76.) Subsequently, however, defense counsel moved for an Order to be relieved as
25 counsel or record for Defendants. (Dkt. 79.) This Court granted the motion on
26 February 5, 2024. (Dkt. 83.) In doing so, the Court informed Defendants that,
27 "[u]nder Local Rule 83-2.2.2, defendants, as corporate entities, cannot proceed, pro
28 se." (*Id.*) The Court ordered Defendants to retain new counsel, and for new counsel

1 to enter an appearance, no later than February 29, 2024. (*Id.*)

2 Because Defendants had failed to procure counsel and enter an appearance by
3 February 29, 2024, Plaintiffs promptly moved for an Order striking Defendants’
4 Answer to the SAC and directing the Clerk to enter default. On March 6, 2024, this
5 Court granted Plaintiffs’ motion to strike and directed the clerk to enter default.
6 (Dkt. 85.) The Clerk entered default against Defendant on March 7, 2024. (Dkt. 86).
7 On April 12, 2024, the Court granted Plaintiffs’ motion for entry of default
8 judgment. (Dkt. 89.) In doing so, the Court found, *inter alia*, that Defendants’
9 infringement was willful and malicious (Dkt. 89 at p.10).

10 **III. THIS COURT SHOULD AWARD ALVANTOR ITS REASONABLE**
11 **ATTORNEYS’ FEES**

12 **A. Alvantor Is Entitled to Its Fees Under the Copyright Act.**

13 *1. Alvantor is the Prevailing Party Under the Copyright Act.*

14 The Copyright Act authorizes district courts to award attorneys’ fees to the
15 prevailing party in a copyright action. 17 U.S.C. § 505 (“Except as otherwise provided
16 by this title, the court may also award a reasonable attorney’s fee to the prevailing
17 party as part of the costs”). “Plaintiffs in copyright actions may be awarded attorneys’
18 fees simply by virtue of prevailing in the action: no other precondition need be met,
19 although the fee award must be reasonable.” *Frank Music Corp. v. Metro-Goldwyn-*
20 *Mayer Inc.*, 886 F.2d 1545, 1556 (9th Cir. 1989). *See also McCulloch v. Albert E.*
21 *Price, Inc.*, 823 F.2d 316, 323 (9th Cir. 1987) (attorneys’ fees generally awarded to
22 prevailing plaintiff in copyright cases). Because the Court has entered default
23 judgment against Defendants, Alvantor is the prevailing party and entitled to fees.
24 *Jackson v. Sturkie*, 255 F.Supp.2d 1096, 1104 (N.D. Cal. 2003) (“Here, plaintiff’s
25 success is complete and unquestioned: a default judgment against defendant and an
26 award of statutory damages.”).¹

27 _____
28 ¹ Alvantor has also established it uses the copyrighted materials at issue pursuant to
(footnote continued)

2. *Alvantor Meets the Discretionary Tests for an Award of Attorneys' Fees Under the Copyright Act.*

While “[t]here is no precise rule or formula” for determining when a court should award attorneys’ fees, the following nonexclusive factors should be considered: “frivolousness, motivation, objective unreasonableness (both in the factual and in the legal components of the case), and the need in particular circumstances to advance considerations of compensation and deterrence.” *Fogerty v. Fantasy, Inc.*, 510 U.S. 517, 535, fn. 19 (1994).

The Ninth Circuit has adopted five nonexclusive factors to be considered in awarding attorneys’ fees in copyright cases: “(1) the degree of success obtained, (2) frivolousness, (3) motivation, objective unreasonableness (legal and factual), and (5) the need to advance considerations of compensation and deterrence.” *Smith v. Jackson*, 84 F.3d 1213, 1221 (9th Cir. 1996). Exceptional circumstances are not a prerequisite to an award of attorneys’ fees in a copyright action. *Historical Research v. Cabral*, 80 F.3d 377, 378 (9th Cir. 1996). Alvantor respectfully submits that the above factors weigh in favor of an award of fees.

a. *Success Obtained.*

In this case, there can be no doubt that Alvantor has attained complete success. Alvantor has obtained a default judgment against Defendants, and this Court has found that Defendants’ copyright infringement was willful and malicious. [Dkt. 89]. This factor weighs in favor of an award of attorneys’ fees.

b. *Frivolousness.*

Alvantor’s copyright claim had substantial merit. Alvantor incurs considerable expense and effort to create Descriptions, which are the subject of the

an exclusive licensing agreement with its president, Ellen Xu, who is the owner of the “135 Registration” and the “004 Registration” (SAC ¶ 28), and that this licensing agreement provides Alvantor with the rights to enforce the copyrights and bring actions regarding the infringement thereof. (*Id.* ¶ 29.)

1 copyrights at issue. (SAC ¶¶ 26-29). Alvantor also established that, without
2 authorization, Defendants used product descriptions on their Amazon listings that
3 are substantially similar to and in some portions nearly word-for-word identical to
4 the description portion of the Alvantor's Descriptions. (*Id.* ¶ 30.) This case resulted
5 in the successful prosecution of an obvious infringement of Alvantor's
6 Descriptions. *Jackson*, 255 F.Supp.2d at 1104 ("Plaintiff's claims clearly cannot be
7 characterized as frivolous, but were brought rather to vindicate the goas of the
8 Copyright Act: the promotion of original musical works for the benefit of the
9 public."). Alvantor brought this claim to protect its business. Thus, this factor
10 weighs in favor of an award of attorneys' fees.

11 *c. Motivation.*

12 Alvantor's motivation in this case was to protect its copyrights, and
13 therefore further the goals of the Copyright Act. Alvantor should be awarded
14 its fees incurred in enforcing its copyrights and protecting its business.
15 Alvantor's Descriptions for its tent products are part of the distinctive "look
16 and feel" relating to presentation, marketing, advertising, and description of its
17 products. These Descriptions and associated trade dress and branding are
18 strongly recognized in the industry as a source identifier for Alvantor. Thus,
19 copyright protection is critical for Alvantor to preserve its business. *Twentieth*
20 *Century Fox Film Corp. v. Streeter*, 438 F.Supp.2d 1065, 1074-75 (D. Ariz.
21 2006) ("In this case, Film Corp. presented a set of facts that establish copyright
22 infringement. Film Corp.'s motivation in pursuing this litigation is to protect
23 its copyrights which is one of the objectives of the Copyright Act.").
24 Accordingly, this factor weighs in favor of an award of attorneys' fees.

25 *d. Objective Reasonableness.*

26 Alvantor's claims, both legal and factual, were objectively reasonable
27 and resulted in a favorable judgment. This factor weighs in favor of an award.
28

1 *e. Compensation and Deterrence.*

2 Awarding attorneys' fees to prevailing plaintiffs serve the purpose of the
3 Copyright Act of "encouraging private enforcement and deterring
4 infringements." *Frank Music Corp.*, 886 F.2d at 1556; *Brighton Collectibles,*
5 *Inc. v. Coldwater Creek Inc.*, 2009 U.S. Dist. LEXIS 4005, at *9 (C.D. Cal.
6 Jan. 20, 2009) ("A fee award in this case of willful infringement furthers the
7 goal of the Copyright Act to serve "the purpose of encouraging private
8 enforcement and deterring infringements.")

9 In this case, an award of attorneys' fees to Alvantor would further this
10 settled goal of the Copyright Act. A significant deterrent to copyright
11 infringement is not merely potential lost profits or statutory damages, but also
12 the specter of being responsible for a plaintiff's attorneys' fees. Without such
13 an award, potential infringers may come to believe that they can make
14 litigation too expensive for copyright owners to protect their rights. The
15 purpose of the Copyright Act is to deter such calculation.

16 Because Alvantor has prevailed on its claims of copyright infringement,
17 and all discretionary factors weigh in favor of awarding Alvantor its requested
18 fees, Alvantor respectfully requests that this Court award Alvantor its
19 reasonable attorneys' fees.

20 **B. Alvantor Is Entitled to Its Fees Under the Lanham Act.**

21 *1. The Lanham Act's Standard for Awarding Attorneys' Fees.*

22 Under the Lanham Act, attorney's fees are available only to the prevailing
23 party in "exceptional cases." 15 U.S.C. § 1117 ("The court in exceptional cases
24 may award reasonable attorney fees to the prevailing party"). Historically, for a
25 case to be "exceptional," the Ninth Circuit has required that the plaintiff show that
26 the defendant engaged in "malicious, fraudulent, deliberate or willful
27 infringement." *See, e.g., Lindy Pen Co. v. Bic Pen Corp.*, 982 F.2d 1400, 1409 (9th
28 Cir. 1993). However, in *Octane Fitness*, the Supreme Court held that an analogous

1 standard under the Patent Act was “unduly rigid, and it impermissibly encumbers
2 the statutory grant of discretion to district courts.” *Octane Fitness, LLC v. ICON*
3 *Health & Fitness, Inc.*, 572 U.S. 545, 553 (2014).

4 The Supreme Court thus clarified that “[d]istrict courts may determine
5 whether a case is ‘exceptional’ in the case-by-case exercise of their discretion,
6 considering the totality of the circumstances.” *Id.* at 554. The Court further
7 articulated that an “exceptional” case is one that “stands out from others with respect
8 to the substantive strength of the party’s litigating position (considering both the
9 governing law and the facts of the case) or the unreasonable manner in which the
10 case was litigated.” *Id.* While there is “no precise rule or formula for making these
11 determinations,” the following non-exclusive factors may be considered:
12 “frivolousness, motivation, objective unreasonableness (both in the factual and legal
13 components of the case) and the need in particular circumstances to advance
14 considerations of compensation and deterrence.” *Id.* at 554, n. 7.

15 The Ninth Circuit has held that “district courts analyzing a request for fees
16 under the Lanham Act should examine the “totality of the circumstances” to
17 determine if the case was exceptional, . . . exercising equitable discretion in light of
18 the nonexclusive factors identified in *Octane Fitness* and *Fogerty* and using a
19 preponderance of the evidence standard.” *SunEarth, Inc. v. Sun Earth Solar Power*
20 *Co.*, 839 F.3d 1179, 1181 (9th Cir. 2016) (en banc). This case stands well outside the
21 ordinary, thus entitling Alvantor, the prevailing party, to reimbursement of its
22 attorneys’ fees because: (1) Alvantor’s claims were remarkably strong based on the
23 relevant facts and law; and/or (2) Defendants litigated this case in an unreasonable
24 and vexatious manner.

25 2. *Alvantor’s Trade Dress Claim Is Exceptional.*

26 Alvantor clearly defined its trade dress in the SAC, and described how it is
27 non-functional. SAC ¶ 54. Alvantor also alleged that other retailers sell bubble tents
28 that compete with Alvantor’s tents, but do not infringe Alvantor’s trade dress. *Id.* ¶¶

1 55-60. The existence of alternative, non-infringing designs is strong evidence that
2 Alvantor's trade dress is non-functional. *See Clicks Billiards, Inc. v. Sixshooters,*
3 *Inc.*, 251 F.3d 1252, 1260 (9th Cir. 2001). In granting Plaintiffs' motion for entry of
4 default judgment, the Court found "Plaintiffs have provided evidence that
5 Defendants' conduct and infringement was willful and malicious." (Dkt. 89, at p.
6 10.) The Ninth Circuit has held that "[a] trademark case is exceptional where the
7 district court finds that the defendant acted maliciously, fraudulently, deliberately, or
8 willfully." *Love v. Assoc. Newspapers, Ltd.*, 611 F.3d 601, 615 (9th Cir. 2010).
9 Thus, Alvantor is entitled to its reasonable attorneys' fees. *JUUL Labs, Inc. v. Chou*,
10 676 F.Supp.3d 827, 849 (C.D. Cal. 2023).

11 "A case may be exceptional based on the unreasonable manner in which it
12 was litigated." *Dig. Reg of Tex., LLC v. Adobe Sys. Inc.*, 2015 WL 1026226, at *9
13 (N.D. Cal. Mar. 9, 2015) (quoting *Octane Fitness*, 572 U.S. at 442). Conduct need
14 not rise to the level of sanctionable to be considered unreasonable. *Octane Fitness*,
15 572 U.S. at 555. Motivation is also a factor when determining whether a case is
16 exceptional under the Lanham Act. *SunEarth*, 839 F.3d at 1181. Here, Defendants
17 abandoned their defense of this action shortly after having filed their Answer, which
18 is evidence of the lack of merit of their position. Worse yet, before abandoning their
19 defense and failing to obtain counsel, Defendants wasted this Court's time and
20 Alvantor's resources by repeatedly attacking Alvantor's pleadings, even though
21 Defendants had no intention of presenting a substantive defense to Alvantor's
22 claims. Such litigation conduct is exceptional and warrants the imposition of
23 attorneys' fees. *See, e.g., San Diego Comic Convention v. Dan Farr Prods.*, 2018
24 U.S. Dist. LEXIS 143809, at *16 (S.D. Cal. Aug. 23, 2018) ("[T]he hallmark of a
25 case that has been litigated in an unreasonable manner is one that involves 'wasteful
26 procedural maneuvers or dilatory tactics.'" (citation omitted); *see also Interstellar*
27 *Starship Servs., Ltd. v. Epix Inc.*, 184 F.3d 1107, 1112 (9th Cir. 1999) (exceptional
28 circumstances can be found when the non-prevailing party's case "is groundless,

1 unreasonable, vexatious, or pursued in bad faith.”); *Cognex Corp. v. Microscan Sys.,*
2 *Inc.*, 2014 U.S. Dist. LEXIS 91203, at *11 (S.D.N.Y. June 30, 2014) (finding patent
3 case exceptional and awarding attorneys’ fees where defendants engaged in
4 “unreasonable litigation tactics that have wasted the Court’s time and have required
5 plaintiffs to expend significant resources”).

6 **C. The Requested Attorneys’ Fees are Reasonable.**

7 The “reasonableness” of attorney’s fees is determined by the “lodestar”
8 method. “When it sets a fee, the Court must first determine the presumptive lodestar
9 figure by multiplying the number of hours reasonably expended on the litigation by
10 the reasonable hourly rate.” *Intel Corp. v. Terabyte Int’l, Inc.*, 6 F.3d 614, 622 (9th
11 Cir. 1993), citing *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). The Court also
12 considers the “results obtained by the prevailing litigant,” including whether the
13 plaintiff prevailed on only some claims and the nature and extent of the relief
14 awarded. *Caudle v. Bristow Optical Co.*, 224 F.3d 1014, 1028-29 (9th Cir. 2000).

15 “‘There is a strong presumption’ that the lodestar calculation ‘is a reasonable
16 fee.’” *United Steelworkers v. Phelps Dodge Corp.*, 896 F.2d 403, 406 (9th Cir.
17 1990). “The lodestar amount presumably reflects the novelty and complexity of the
18 issues, the special skill and experience of counsel, the quality of representation, and
19 the results obtained from the litigation.” *Intel*, 6 F.3d at 622; *see also Perdue v.*
20 *Kenny A.*, 559 U.S. 542, 553, 130 S. Ct. 1662, 176 L. Ed. 2d 494 (2010) (noting that
21 the lodestar figure includes “most if not all of the relevant factors constituting a
22 reasonable attorney’s fee). “[In] appropriate cases, the district court may adjust the
23 ‘presumptively reasonable’ lodestar figure based upon the factors listed in *Kerr v.*
24 *Screen Extras Guild, Inc.*, 526 F.2d 67, 69-70 (9th Cir. 1975), that have not been
25 subsumed in the lodestar calculation.” *Intel*, 6 F.3d at 622. Those factors are as
26 follows:

- 27 (1) the time and labor required, (2) the novelty and difficulty of the
28 questions involved, (3) the skill requisite to perform the legal service

1 properly, (4) the preclusion of other employment by the attorney due
2 to acceptance of the case, (5) the customary fee, (6) whether the fee is
3 fixed or contingent, (7) time limitations imposed by the client or the
4 circumstances, (8) the amount involved and the results obtained,
5 (9) the experience, reputation, and ability of the attorneys, (10) the
6 ‘undesirability’ of the case, (11) the nature and length of the
7 professional relationship with the client, and (12) awards in similar
8 cases.

9 *Id.*

10 1. *The Requested Hourly Rates Are Reasonable.*

11 In determining whether an hourly rate is reasonable, the Court considers the
12 “prevailing market rates in the relevant community.” *Blum v. Stenson*, 465 U.S. 886,
13 895, n. 11 (1984). Courts also consider the experience, skill, and reputation of the
14 attorney requesting fees. *See Webb v. Ada Cnty.*, 285 F.3d 829, 840 & n.6 (9th Cir.
15 2002). The fee applicant bears the burden of showing that the rates requested are
16 reasonable. *See Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 980 (9th Cir. 2008)
17 (“Affidavits of the plaintiff[‘s] attorneys and other attorneys regarding prevailing
18 fees in the community . . . are satisfactory evidence of the prevailing market rate.”)
19 Additionally, the Court may also use its “own knowledge of customary rates and
20 their experience concerning reasonable and proper fees.” *Ingram v. Oroudjian*, 647
21 F.3d 925, 928 (9th Cir. 2011). The Ninth Circuit has ruled that “by and large, the
22 court should defer to the winning lawyer’s professional judgment as to how much
23 time he was required to spend on the case.” *Moreno v. City of Sacramento*, 534 F.3d
24 1106, 1112 (9th Cir. 2008).

25 Here, Alvantor requests \$475.00 per hour for the work completed by Messrs.
26 Dang and Picariello, and \$450.00 per hour for the work completed by Mr.
27 Shankman. As set forth in more detail in their respective declarations, Mr. Dang
28 specializes in intellectual property litigation, an area in which he has practiced since

1 1998. Mr. Picariello has been in private practice since 1998. Mr. Picariello is a
2 general commercial litigator, whose practice includes, among other things, unfair
3 competition, business torts, and intellectual property. Finally, Mr. Shankman has
4 practiced for nearly 40 years. Mr. Shankman primarily practices in bankruptcy
5 court, where he has litigated numerous commercial disputes. He has also litigated
6 several intellectual property disputes, including two other matters for Alvantor.

7 These hourly rates are in line with the hourly rates “prevailing in the
8 community for similar services by lawyers of reasonably comparable skill,
9 experience, and reputation.” *Blum v. Stenson*, 465 U.S. 886, 895 n.11, 104 S. Ct.
10 1541, 79 L.Ed.2d 891 (1984). For example, in *Sigma Enters. v. Alluring Deals, LLC*,
11 2017 U.S. Dist. LEXIS 223185, at *29 (C.D. Cal. Nov. 15, 2017) (DOC), this Court
12 approved partner rates of \$425 to \$585 per hour, and an of counsel rate of \$445. In
13 doing so, the Court relied on, *inter alia*, *Perfect 10, Inc. v. Giganews, Inc.*, 2015
14 U.S. Dist. LEXIS 54063, at *45-46 (C.D. Cal. Mar. 24, 2015), *aff’d* 847 F.3d 657
15 (9th Cir. 2017) (finding the following rates reasonable in a copyright infringement
16 action: \$705 per hour for a partner with seventeen years' experience; \$375-\$560 per
17 hour for an associate with five years' experience; \$360 per hour for an associate with
18 one year experience; \$285 an hour for a paralegal).

19 2. *Alvantor’s Hours Expended Are Reasonable.*

20 “Although it is true that the fee applicant bears the burden of submitting
21 ‘evidence supporting the hours worked and rates claimed,’ the Supreme Court has also
22 stated that plaintiff’s counsel ‘is not required to record in great detail how each minute
23 of his time was expended.’” *Fischer v. SJB-P.D. Inc.*, 214 F.3d 1115, 1121 (9th Cir.
24 2000) (quoting *Hensley*, 461 U.S. at 433, 437 n.12.) Rather, a plaintiff can satisfy its
25 burden (albeit barely) “by simply listing [its] hours and ‘identifying the general subject
26 matter of [its] time expenditures.’” *Id.* (citation omitted). “Fee requests can be based on
27 ‘reconstructed records developed by reference to litigation files.’” *Id.* (quotation
28 omitted).

1 Preliminarily, Alvantor has taken several steps to remove several categories of
2 tasks from consideration, as they do not involve time spent on its copyright or
3 trademark claims. Specifically, Alvantor does not seek reimbursement of fees related
4 solely to: (1) Alvantor's and Leedor's IIPEA claim (including, but not limited to, the
5 motion for leave to file a Fourth Amended Complaint to add IIPEA claim and join
6 Leedor as a Plaintiff; (2) third-party discovery on Amazon.com, which relates to
7 Alvantor's and Leedor's IIPEA claim; (3) the preparation of the Rule 11 motion
8 Plaintiffs had served on Defendants; and (4) time entries related to Messrs. Dang's and
9 Picariello's transition when replacing Mr. Shankman as the day-to-day counsel in this
10 matter.² All of the billing entries for which Alvantor is not seeking reimbursement (*i.e.*,
11 "Non-Reimbursable Hours") are attached to the Dang Declaration as Exhibit 1 and
12 highlighted in red.

13 Alvantor has also apportioned the fees it is requesting in this Motion when a
14 particular billing entry involves both covered (*i.e.*, time spent on Alvantor's copyright
15 or trademark claims) and non-covered time (*i.e.*, time spent on Alvantor's IIPEA
16 _____

17 ² There is a combined total of 16.20 hours of "No Charge" entries for Messrs. Dang
18 and Picariello (or \$7,695 in write-offs), which are primarily attributable to tasks
19 during the transition from Mr. Shankman to Messrs. Dang and Picariello. Fortis
20 never charged Alvantor for these non-billable entries, but it included them for
21 informational purposes. These "No Charge" entries are highlighted in red on Exhibit
22 1 to the Dang Declaration. There is also second type of Non-Reimbursable Hours
23 highlighted in red on Exhibit 1; namely, tasks that were billed to Alvantor, but for
24 which Alvantor is not seeking reimbursement in this Motion for Attorneys' Fees
25 (*e.g.*, fees related solely to the IIPEA claim). For this second type of Non-
26 Reimbursable Hours, there is a combined total of 80.8 hours of entries by Messrs.
27 Dang and Picariello (or \$38,380.00) that Fortis had billed to Alvantor. Thus, a
28 combined total of 97 Non-Reimbursable Hours (or \$46,075) of Messrs. Dang's and
29 Picariello's entries are not included in this Motion.

30 As for Mr. Shankman, the invoices show he included 61 hours of "No Charge"
31 entries (or \$27,450.00 in write-offs), which were never charged to Alvantor. These
32 entries are also highlighted in red on Exhibit 1 to the Dang Declaration, and these
33 entries are not the subject of Alvantor's Motion.

1 claim). These “mixed” entries include, but are not limited to, the following: (1) the
2 Court-ordered expedited written discovery and depositions; (2) opposing Defendants’
3 motion to dismiss the Fourth Amended Complaint; (3) tasks related to Defendants’
4 counsel’s motion to withdraw, and Plaintiffs’ subsequent motion to strike Defendants’
5 answer and direct the clerk to enter default; and (4) Plaintiffs’ motion for entry of
6 default judgment and a permanent injunction. Based on Messrs. Dang’s and Picariello’s
7 experience and review of these “mixed” entries, and the fact that the IIPEA claim
8 constitutes just one of five causes of action, they believe it is reasonable for these
9 “mixed” entries to be discounted by 30%. *See Jackson*, 2022 U.S. Dist. LEXIS 110670,
10 at *22-23 (reducing lodestar by 30% to account for the non-Lanham Act claims
11 plaintiff pursued because “the total amount of work done in litigation is not perfectly
12 scalable with the claims brought”). All of the discounted billing entries for which
13 Alvantor is seeking partial reimbursement are attached to the Dang Declaration as
14 Exhibit 1 and highlighted in yellow.

15 Finally, there are a number of entries that were unrelated to Alvantor’s and
16 Leedor’s IIPEA claim. Accordingly, these entries are not discounted. All of the non-
17 discounted billing entries for which Alvantor is seeking full reimbursement are attached
18 to the Dang Declaration as Exhibit 1 and highlighted in green.

19 The resulting breakdown of attorneys’ fees through the entry of default judgment
20 on April 12, 2024, is as follows:

21 Sang Dang (between May 22, 2023 and April 12, 2024):

- 22 • Non-discounted hours (32.20), which totals \$15,295.00;
- 23 • Discounted hours (71.1 * \$475/hr. * 0.7), which totals \$23,640.75; and
- 24 • Non-Reimbursable Hours (32.80 hours). Dang Decl. ¶ 9.

25 Salvatore Picariello (between May 19, 2023 and April 12, 2024):

- 26 • Non-discounted hours (10.2), which totals \$4,845.00;
- 27 • Discounted hours (60.45 * \$475/hr. * 0.7), which totals \$20,099.25;
- 28 • Non-Reimbursable Hours (64.20). Picariello Decl. ¶ 9.

1 Paul R. Shankman (between July 6, 2022 and May 17, 2023):

- 2 • Non-discounted hours (67.00), which totals \$30,150.00;
3 • Non-Reimbursable Hours (61.00).³ Shankman Decl. ¶ 9.

4 Total through April 12, 2024: \$94,030.00.

5 Total for preparation of Motion for Attorneys' Fees: 12.50 hours, which totals
6 \$5,937.50. Dang Decl. ¶ 10; Picariello Decl. 10.

7 **Grand Total: \$99,967.50.**

8 Alvantor respectfully submits that no further adjustments to the lodestar are
9 warranted under the circumstances, especially given Alvantor's success and
10 Defendants' improper litigation tactics.

11 **IV. CONCLUSION**

12 For the foregoing reasons, Alvantor respectfully requests this Court award
13 \$99,967.50 in attorneys' fees and enter judgment against Defendants jointly and
14 severally.

15 Dated: April 22, 2024

FORTIS LLP

17 By: /s/ Sang Dang

18 Sang Dang (SBN 214558)

19 sdang@fortislaw.com

650 Town Center Drive, Suite 1530

Costa Mesa, CA 92626

20 Tel: (714) 839-3800

21 *Attorneys for Plaintiffs*

22
23
24
25
26
27 _____
28 ³ Based on Messrs. Dang's, Picariello's and Shankman's respective hourly rates, there is a combined total of \$73,525.00 of Non-Reimbursable Hours.

CERTIFICATE OF SERVICE

I, Vanessa Parsons, declare as follows:

I am employed in the County of Orange, State of California; I am over the age of eighteen years and am not a party to this action; my business address is 650 Town Center Drive, Suite 1530, Costa Mesa, CA 92626. On April 22, 2024, I served the following document(s):

**PLAINTIFF ALVANTOR INDUSTRY CO., LTD.'S NOTICE OF MOTION
AND MOTION FOR ATTORNEYS' FEES; MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT THEREOF**
on the parties stated on attached service list

All Defendants except Miruo Mirror Inc.:

Yiyue Xu
xuyiyue@gmail.com

Yiwei Gu
355586274@qq.com
ing1688@hotmail.com;
jordaus@163.com; and
chendaqi5@gmail.com

Defendant Miruo Mirror Inc.
Registered Agents Inc.,
1942 Broadway St., STE 314C,
Boulder, CO 80302

☒ **BY US MAIL.** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Costa Mesa, California, addressed to the parties as set forth above.

☒ **BY E-MAIL.** By sending via e-mail, to the parties for service of the foregoing documents to the persons listed on this Service List.

☐ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☒ **(FEDERAL)** I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 22, 2024, at Costa Mesa, California.

/S/ VANESSA PARSONS
Vanessa Parsons